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August 14, 2006

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station, 2<sup>nd</sup> Floor  
Boston, MA 02110

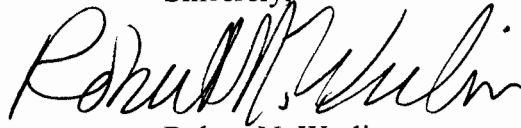
Re: NSTAR Electric Company, D.T.E. 06-40

Dear Secretary Cottrell:

Enclosed for filing is the NSTAR Electric Motion for a Protective Order in the above-referenced case. Also enclosed is a Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert N. Werlin", written in a cursive style.

Robert N. Werlin

Enclosures

cc: Joan Foster Evans, Hearing Officer  
Service List

**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

\_\_\_\_\_)  
Boston Edison Company, Cambridge Electric  
Light Company, Canal Electric Company and  
Commonwealth Electric Company d/b/a NSTAR Electric )

D.T.E. 06-40

**CERTIFICATE OF SERVICE**

I certify that I have this day served the foregoing document upon the Department of Telecommunications and parties of record in accordance with the requirements of 220 C.M.R. 1.05 (Department's Rules of Practice and Procedures).



Robert N. Werlin, Esq.  
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Dated: August 14, 2006

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

\_\_\_\_\_  
NSTAR Electric Company )  
\_\_\_\_\_) )  
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D.T.E. 06-40

**MOTION OF BOSTON EDISON COMPANY, CAMBRIDGE ELECTRIC LIGHT  
COMPANY, CANAL ELECTRIC COMPANY AND COMMONWEALTH  
ELECTRIC COMPANY FOR A PROTECTIVE ORDER**

**I. INTRODUCTION**

On May 26, 2006, Boston Edison Company (“Boston”), Cambridge Electric Light Company (“Cambridge”), Canal Electric Company (“Canal”) and Commonwealth Electric Company (“Commonwealth”; together, the “Companies”) filed a petition requesting approval from the Department of Telecommunications and Energy (the “Department”), pursuant to G.L. c. 164, § 96, of the proposed merger among and between the Companies to create a single electric company, NSTAR Electric Company (“NSTAR Electric”). The Department docketed the Companies’ filing as D.T.E. 06-40.

At the June 29, 2006 procedural conference, the Department established a discovery deadline of July 26, 2006 for issuing requests for information from NSTAR Electric. The Department issued six sets of information requests, the Attorney General issued five sets of information requests, Massachusetts Institute of Technology issued two sets of information requests, and the Retail Energy Supply Association and the Cape Light Compact have both issued one set of information requests. In the response to Information Request AG-2-5, private customer information including monthly billed amounts, billing quantities and monthly bill calculations are provided as attachments. In order to protect the customer-sensitive data provided in Attachments AG-2-5(a) through

AG-2-5(d) and Attachment 2-5(a)(Supp), NSTAR Electric requests that a protective order be issued by the Department pursuant to G.L. c. 25, § 5D.

## **II. LEGAL STANDARD**

Confidential information may be protected from public disclosure by the Department in accordance with G.L. c. 25, § 5D, which states in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

In interpreting the statute, the Department has held that:

. . . [T]he burden on the company is to establish the need for protection of the information cited by the company. In determining the existence and extent of such need, the Department must consider the presumption in favor of disclosure and the specific reasons why disclosure of the disputed information benefits the public interest.

The Berkshire Gas Company et al., D.P.U. 93-187/188/189/190, at 16 (1994) as cited in Hearing Officers Ruling On the Motion of Boston Gas Company for Confidentiality, D.P.U. 96-50, at 4 (1996).

## **III. ARGUMENT**

The data provided in Attachments AG-2-5(a) through AG-2-5(d) and Attachment 2-5(a)(Supp) should be protected from public disclosure because they represent confidential customer usage and billing information. As a general business principle, the Companies treat all customer information as confidential and maintain such information as proprietary. For customers, their electric usage, billing and account information are

likewise confidential and proprietary. It discloses non-public information regarding a customer and their usage characteristics in which customers have a legitimate privacy interest. See Competitive Market Initiatives, D.T.E. 01-54-A at 6-7 (2001). Various provisions of the Restructuring Act highlight the need to vigorously protect customer information. See G.L. c. 164, § 1C(v) (providing that a distribution company cannot share proprietary customer information with its affiliates without customer authorization); G.L. c. 164, § 1F(7) (directing the Department to establish rules and regulations governing the confidentiality of customer information).

Moreover, in recognition of the confidential nature of such information, the Department has established specific guidelines for the release of historical customer usage information under limited conditions. See 220 C.M.R. §§ 11.05(4)(a), 11.04(12); Competitive Market Initiatives, D.T.E. 01-54-A. Specifically, the Department has developed a protective opt-out mechanism for customers to guard usage and billing information from the potential disclosure of proprietary billing and usage information to competitive suppliers. Competitive Market Initiatives, D.T.E. 01-54-A at 24-26. In addition, even where disclosure is authorized, customer billing information is available only to licensed competitive suppliers and electricity brokers and only for the limited purpose of marketing electricity-related services. Id. at 11.

Accordingly, the data in Attachments AG-2-5(a) through AG-2-5(d) and Attachment 2-5(a)(Supp) are precisely the kind of information that should continue to be protected from public disclosure. Indeed, Attachments AG-2-5(a) through AG-2-5(d) and Attachment 2-5(a)(Supp) contain specific information on monthly billed amounts from 2004-2006 as well as billing quantities and monthly bill calculations for individual

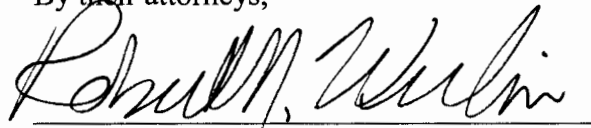
customers. This information is not currently publicly available, nor should it be as a result of the discovery process in this case. For these reasons, the Department should provide protective treatment for these attachments by allowing this Motion for a Protective Order pursuant to G.L. c. 25, § 5D.

**WHEREFORE**, for the reasons set forth herein, the Companies respectfully request that the Department allow the Companies' Motion for a Protective Order.

Respectfully submitted,

**BOSTON EDISON COMPANY,  
CAMBRIDGE ELECTRIC LIGHT COMPANY  
COMMONWEALTH ELECTRIC COMPANY  
CANAL ELECTRIC COMPANY**

By their attorneys,

A handwritten signature in black ink, appearing to read "Robert N. Werlin", is written over a horizontal line.

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Dated: August 14, 2006